

REMARKS

Applicants will address each of the Examiner's objections and rejections in the order in which they appear in the Final Rejection of June 7, 2004.

Claim Rejections - 35 USC §112

In the Final Rejection, the Examiner objects to Claims 32 and 33 under 35 USC §112, second paragraph, for informalities therein. In particular, the Examiner suggests that the limitation "the treating element" in these claims be changed to "a treating element."

While Applicants do not believe such an amendment is necessary, in order to advance the prosecution of this application, Applicants have amended Claims 32 and 33 as requested by the Examiner. Accordingly, it is respectfully requested that this rejection be withdrawn.

Claim Rejections - 35 USC §102

Claims 48 and 49

The Examiner also rejects Claims 48 and 49 under 35 USC §102(b) as being anticipated by Nita. This rejection is respectfully traversed.

In order to advance the prosecution of this application, Applicants have amended Claim 48. Amended independent Claim 48 of the present application is directed to a "catheter for use in a system for intraluminal treatment of a selected site in a body of a patient by at least one treating element movable in the catheter by means of pressurized fluid." The claim further recites "a treating element comprising a hollow cylinder encapsulating a radioactive material." It is respectfully submitted that Nita does not disclose or suggest such a catheter nor such a treating element.

In contrast, Nita is directed to an ultra-sound catheter which has an ultrasound transmission member or wire “extending longitudinally therethrough” (see Abstract in Nita). As explained in Col. 5, lns. 17-23 of Nita, the ultrasound transmission member or wave guide (24) extends longitudinally through the lumen of the catheter body to transmit ultrasound energy from an ultrasound transducer connected to the proximal end of the catheter to the distal end thereof. There appears to be no disclosure or suggestion of a treating element which has radioactive material, or a treating element comprising a hollow cylinder encapsulating the radioactive material, or a catheter in which the treating element is movable by means of pressurized fluid, as in independent Claim 48.

Accordingly, for at least the above-stated reasons, independent Claim 48 and the claims dependent thereon are clearly patentable over the cited reference. Therefore, it is requested that this rejection be withdrawn.

Claims 29, 32-34, 42, 43, 44, 47, 48 and 49

The Examiner also rejects Claims 29, 32-34, 42, 43, 44, 47, 48 and 49 under 35 USC §102(e) as being anticipated by Harrison et al. This rejection is also respectfully traversed.

In particular, the Examiner alleges that Harrison discloses a catheter having a first tube (172) having a lumen partially closed at its distal end and sized to slidably receive the treating element, a second tube (32) in parallel relation to the first tube and having a lumen open at its distal end and sized to receive a guidewire; and a third tube (164) for receiving the first and second tubes and having a fluid return lumen in fluid communication with the lumen of the first elongated tube.

Applicants respectfully disagree with this characterization of the reference by the Examiner. For example, in contrast to the Examiner’s statement Harrison discloses the following three lumens: (1) an inflation lumen 36 formed of three sections (Col. 9, lns. 12-16), (2) a lumen 34 for a

guidewire and (3) a drug delivery lumen 38 (Col. 9. Ins. 10-7). Contrary to the Examiner's characterization, Harrison describes 172 as "the bond of 172 of the middle inflation lumen tubing 164 to the proximal inflation lumen 166" (which is all part of the same inflation lumen 36). 172 is not a lumen sized to slidably receive a treating element, as recited in claims of the present application. Also, contrary to the Examiner's characterization, 164 is a middle inflation lumen section of lumen 36, not a fluid return lumen as in the claimed invention. Further, while Harrison discloses a drug delivery lumen 38, there is no disclosure or suggestion of this tube having an opening in fluid communication with the alleged third tube, as recited in the claims of the present application.

Hence, all of the limitations of the claimed invention are not disclosed or suggested in Harrison. Therefore, the claims are patentable thereover, and it is respectfully requested that this rejection be withdrawn.

Claim Rejections - 35 USC §103

The Examiner also rejects Claims 29-35, 37, 42-44, 47-49 under 35 USC §103 as being unpatentable over Harrison. This rejection is also respectfully traversed.

For the reasons discussed above, the rejected claims also would not have been obvious in view of Harrison. Hence, it is respectfully requested that this rejection be withdrawn.

Double Patenting

The Examiner also rejects Claims 29-34, 35, 37, 42, 43, 44, 47, 48 and 49 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 6, 7, 8, 10, 11, 12, 17, 19, 20, 22, 35 of US Patent 5,899,882. This rejection is respectfully traversed.

Applicants respectfully submit that the claims are not claiming the same subject matter. The '882 patent was filed as a continuation-in-part of the grandfather of the present application, which was filed prior to the '882 patent. The reasons the '882 patent was filed as a CIP as it disclosed and claimed additional subject matter to that disclosed and claimed in the grandparent (and present application). For example, claim 11 of the '882 patent requires a reinforcing connector. Such a connector is not disclosed nor claimed in the present application. Claim 22 of the '882 patent requires a balloon. Such a balloon is not claimed in the present application. Hence, different subject matter is being claimed, and there is no double patenting between the '882 patent and the present application.

Therefore, it is respectfully requested that this rejection be withdrawn.

Information Disclosure Statement

Applicants are preparing an IDS to ensure that all the references from the parent, grand parent and related applications are cited herein. That IDS will be submitted in the very near future. It is respectfully requested that no further action be issued on this application until that IDS has been received and considered by the Examiner.

Conclusion

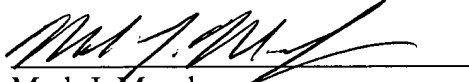
Therefore, for at least the above-stated reasons, the present application is in an allowable condition and should be allowed.

If any further fee is due for this amendment, please charge our deposit account 50/1039.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,

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